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JUN 18 1996

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WILLIAM L. WHITELY
19 NORTH RIDGE STREET
RYE BROOK, NEW YORK 10573

Secretary
Federal Communications Commission
1919 M Street
Washington, DC 20554

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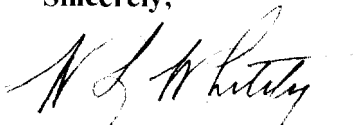
RE: Supplement to Petition for Proposed Rule Making

Dear Secretary:

Enclosed please find an original and requisite copies of a Supplement To Petition for Proposed Rule Making and Request for Expedited Consideration submitted by the undersigned. This filing should be associated with the Petition for Proposed Rule Making submitted by the undersigned on December 29, 1995.

Any questions regarding this matter should be referred to me at the above address or by telephone at 913-939-7484.

Sincerely,



William L. Whitely

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JUN 18 1996
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of }
 }
Distribution of Adult }
Movies and Other Indecent }
Programming via Satellite and }
Closed Circuit Transmission }
Systems Including Broadcast TV }
Signals }

File No. _____

To: The Commission

**Supplement To Petition for Proposed Rule Making
and Request for Expedited Consideration**

William L. Whitely, Petitioner herein, on December 29, 1995 submitted a Petition for Proposed Rule Making (Petition) pursuant to the Commission's rules with regard to the adoption of rules to regulate the transmission of adult, sexually explicit and X-rated movies¹ and other indecent programming material via satellite and closed circuit transmission systems where such objectionable programming is distributed together with broadcast TV signals and is available to minors under the age of 18 within the U.S. hotel market, as well as in hospitals, supervised retirement facilities and military installations. Petitioner respectfully submits this Supplement to Petition for Proposed Rule Making and Request for Expedited Consideration (Supplement).

To date, the Commission has not commenced the requested Rule Making Proceeding. Petitioner has been in communication with the Office of the Commission Chairman and has requested a status report on this and related matters . In the

¹ For purposes of the Petition, the terms "Adult," "X-rated," "non-rated films for mature audiences," "sexually explicit" are used interchangeably to reference films with graphic sexual content, scenes, themes and/or acts that might be found by some in the audience to be salacious, pandering, indecent, obscene, profane and/or pornographic.

view of Petitioner, certain recent events including an antitrust compliance proceeding being conducted at the Federal Trade Commission as outlined below support the commencement of the requested Rule Making Proceeding under an expedited timetable.

I. FTC Antitrust Review Proceeding

At the time of the submission of the Petition, the two leading companies supplying movies and other entertainment programming via in-hotel systems were On Command Video Corporation (On Command), a subsidiary of Ascent Entertainment Group, Inc.(Ascent) which in turn is an 80% owned subsidiary of COMSAT Corporation (COMSAT) and SpectraVision, Inc. (SpectraVision). During 1995, SpectraVision filed for protection for the second time under Chapter XI of the Federal Bankruptcy Law. Since the filing of the Petition, Ascent has proposed a transaction to merge On Command and SpectraVision. This proposed transaction must be reviewed by the Federal Trade Commission to determine compliance with antitrust and related statutes and policies as administered by the FTC.

Petitioner notes that the Commission and the FTC pursuant to statute and established joint agency policies coordinate various regulatory functions.² In addition to the antitrust matters at issue in the proposed On Command-SpectraVision merger (the merged company will in effect dominate the in-hotel room entertainment business delivering programming to over one million hotel rooms), it is expected that the two agencies will coordinate administration of their policies designed to protect the interests of unattended minors.

Petitioner notes that the FTC has for over two decades been in the forefront of establishing commercial advertising and related policies with the specific objective of protecting minors from unfair, improper, deceptive and illegal advertising practices. The exposure of minors to the types of exploitive and pornographic movies and other sexually explicit programs that are the subject of the Petition must be of immediate concern to the

² Petitioner has been in communication with the FTC seeking information concerning expected coordination with the Commission with regard to this proposed On Command-SpectraVision merger.

FTC as well. Petitioner would therefore expect that the Commission would seek to coordinate its activities on this issue with the FTC.

Since the proposed On Command- SpectraVision merger is currently before the FTC, it would appear of immediate importance for the Commission to commence its own review of the issues outlined in the Petition and to coordinate its actions with those of its sister agency.

2. Recent Information Supportive of Petition

Petitioner has been provided a copy of a recent article which appeared in the *Rocky Mountain News* on Sunday, May 26, 1996. (See copy attached as Exhibit 1.) The story in question presents a profile on Beacon Communications, Inc. (Beacon), another subsidiary of Ascent.

While the article deals mainly with the future movie production plans of Beacon as outlined by its chief operating executives, at two places in the article, On Command is identified as a "cable" system.³ Petitioner noted these references with interest since such an identification coincides directly with one of the positions set forth in the Petition, namely, that On Command does in fact function as a cable company supplying over-the-air programming, cable network programming and pay-per-view features to hotel room guests. Given this function, On Command and SpectraVision should be regulated directly by the Commission.

There is an additional matter addressed in the article which raises the concern of Petitioner. Extensive attention is given to the escalating costs of movie production and distribution. It is stated that Beacon is able to draw upon the financial resources of COMSAT to compete in this capital intensive business. The following statements are included in the article:

³ One reference is to the "On Command Video hotel cable tv system" and the second such reference is to On Command - "The cable system."

“...being a part of a public company forces a more conservative bent [to production] than an independent, private film-maker might have. But a big benefit is the financial flexibility a big parent provides in paying for movie projects.”

...because Beacon can tap Ascent's [and COMSAT's] resources for more of its upfront cash needs, it has the flexibility to negotiate for a bigger part of the back end...That's a big consideration when even a medium budget picture ...costs about \$25 million. By comparison [Beacon's latest picture] *Air Force One* is budgeted at about \$60 - \$70 million...”

It is noted that the Commission pursuant to the Communications Satellite Act of 1962, as amended (47 USC Section 701, et seq.) is delegated regulatory authority over COMSAT and its various activities. Of particular concern are the so-called regulated activities related to INTELSAT and INMARSAT international satellite organizations. The Commission must also be concerned with so-called unregulated businesses (such as On Command and Beacon) especially in so far as their operations might affect the regulated business sector.

Petitioner notes the various operating issues addressed in the Petition can directly impact COMSAT's position and stature as the United States representative to INTELSAT and INMARSAT organizations. Many countries observe strict censorship policies and moral standards that outlaw and/or condemn the types of graphic films and other sexually explicit programs that COMSAT carries on its On Command system each day. It is questionable how COMSAT can properly carry out its responsibilities as the U.S. telecommunications ambassador to INTELSAT and INMARSAT member countries when involved in the business of distributing films of the type outlined. Such activities which are abhorrent to accepted family moral standards in our country, also must be viewed as contrary to acceptable standards that are expected to be followed by any corporation representing the interests of the United States in foreign countries. The dissemination of pornographic film materials overseas appears to be directly opposite to the United States human rights foreign policy objectives, especially as regards exploitation of minors and women.

The Commission also should be concerned with the financial conundrum necessarily involved in Hollywood film production, the expansion business which COMSAT has chosen

to pursue. Year after year, major motion picture companies report financial performance records which can range from significant profits to substantial losses. The appended *Rocky Mountain News* article, for example, references the \$175 million loss from a single picture, *Waterworld*, experienced by Universal Pictures. This significant loss led to the sale of Universal's parent, MCA, Inc., to Seagrams, Inc. In addition, a story in today's *Wall Street Journal* reports that Sony Pictures (formerly Columbia Pictures and a division of Sony Corp.) has four films presently released to theaters (since February 2, 1996) which cost \$151 million and have earned only \$57 million to date. Further, of the ten major films released by Sony since January, only one has made a profit. (*Wall Street Journal*, June 14, 1996, p. B1.)

COMSAT (through Ascent) has now embarked on the road to not Las Vegas but Hollywood glamour and hoped-for profits. A critical issue must be whether proper coordination has been provided to assure against the type of financial disaster which is all too common in the film production business.⁴ In the case of the current Beacon production, *Air Force One*, for example, a proper question should be raised as to COMSAT's contingency plans should a substantial part of such major motion picture investment be required to be written off. If such contingencies are not available, COMSAT's financial standing would be affected, thus impacting its INTELSAT and INMARSAT responsibilities.

3. Request for Expedited Consideration

Adoption of the rule as proposed in the Petition is based on the Commission's ancillary jurisdiction authority, as well as its general authority under the Communications Act of 1934, as amended. The subject in-room hotel closed circuit service offers access to over the air television signals as part of its service offering and establishes the basis for exercise of the Commission's regulatory authority exists. Further, in such instances, the transmission of X-rated or Adult movies over such systems to persons under the age of 18

⁴ Petitioner notes that the Communications Satellite Act requires COMSAT to seek and receive the prior approval of the Commission with regard to all stock acquisitions (Section 210 (c)(8)). Petitioner has requested information concerning the Commission's approval of various recent acquisitions including On Command and Beacon Communications. All such acquisitions are required to meet public interest standards and to comply fully with the purposes of the Communications Satellite Act. Petitioner does not believe that either of the cited acquisitions could be found to meet these standards.

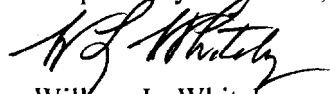
must properly be regulated by the Commission for to do otherwise would in effect promote the wide dissemination of indecent and otherwise objectionable materials to an underage population that should not have ready access to such programming.

The matters addressed in this Supplement fully warrant careful review by the Commission on an expedited basis. Further, with the pending proceeding at the Federal Trade Commission involving On Command, it becomes a matter of immediate importance that the Commission commence the requested Rule Making Proceeding and coordinate this and related issues with the FTC.

The burden of the proposed rule is slight. As Petitioner has heretofore noted, all persons concerned with the operation of in-room entertainment pay video services must clearly agree that steps should be taken to make certain that X-rated films are not made available to persons under the age of 18. The implementation of the policy as proposed by Petitioner only requires the imposition of a lock-out viewing guard on all X-rated channels that can be lifted immediately on request of a guest over 18 years of age. As most if not all hotel systems have such a lock out guard, the proposed rule will not require the installation of new equipment. Rather, only the adoption and enforcement of the proposed Child Viewing Protection Policy is necessary.

Petitioner respectfully requests that the Commission take a leadership position so as to assure that the Child Viewing Protection Policy is established and enforced by the hospitality pay television industry.

Respectfully submitted,



William L. Whitely

Petitioner

19 North Ridge Road

Rye Brook, New York, 10573

June 14, 1996

CERTIFICATE OF SERVICE


I, William L. Whitely, have this 14 th day of June, 1996 forwarded via First Class Mail postage pre-paid or Federal Express the attached copy of the foregoing Supplement To Petition for Proposed Rule Making and Request for Expedited Consideration to the following:

**Arthur M. Aaron, Esq.
Vice President, Business and Legal Affairs
and Secretary
Ascent Entertainment Group, Inc.
6560 Rock Spring Drive
Bethesda, Maryland 20817**

**Eric R. Jacobsen, Esq.
Vice President General Counsel
LodgeNet Entertainment Corp.
808 West Avenue North
Sioux City, SD 57104**

**G.G. Weik
President
SpectraVision, Inc.
1501 North Plano Road
Richardson, TX 75081**

**Warren Y. Zeger, Esq.
Vice President, General Counsel, Secretary
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, Maryland 20817**



William L. Whitely

Exhibit 1

SECTION B

DOW'S CENTENNIAL: Milestone brings back memories. **2B**

THE LEMONADE BIZ: Young member inspires chamber. **3B**

16TH STREET WOES: Store closing but mall hopeful. **5B**

Rocky Mountain News

Business

SPORTS
SECTION INSIDE

SUNDAY • MAY 26 • 1996

"Like any other town, or like life, there's a certain measure to your size." — Arnyan Bernstein, Beacon chairman



Photos by Mel Melcon/Special to the News

The other Players

By Bill Menozes

Rocky Mountain News Staff Writer

HOLLYWOOD — Hockey season isn't over, but the owner of the Colorado Avalanche already has signed its next big star, Harrison Ford.

Indiana Jones won't be lacing his skates and cross-checking Mario Lemieux next season. But Denver's Ascent Entertainment Group snagged Ford for another mission that could bring the company as much acclaim as a Stanley Cup would.

Ford stars as the U.S. president in next summer's *Air Force One*, a high-budget thriller for a business with a relatively low profile: Beacon Communications.

Beacon, along with the Ava-

lanche, the Denver Nuggets pro basketball team and On Command Video, was spun off by Comsat Corp. in December when it sold 20% of its entertainment and video

While Ascent Entertainment sets lofty goals for its pro sports teams in Denver, its movie studio in Hollywood is aiming for the stars

businesses to the public as Ascent.

The championship-contending Avalanche are getting most of the press right now, while the On Command Video hotel cable TV system produces most of Ascent's profits.

But in Hollywood, Beacon quietly has positioned itself as a cornerstone of Ascent's strategy to become an entertainment powerhouse.

The movies are a notoriously risky way to make money, but Ascent sees in Beacon a financially reliable, proven

See **BEACON** on **20B**



"People in Hollywood are very keen observers of the rest of the world. . . . They're very keenly aware of where the money is."

— Marc Abraham, president

Series takes readers on rocket ride



Don Knox

Business Editor

We who stand to inherit the nation's military-industrial complex might fairly wonder what we'll get in the post-Cold War era.

Is our American birthright a collection of giant defense contractors turned rumble commercial competitors? Is it a clutch of hangers-on suckling a shrinking Pentagon budget?

Or, in the face of brutal foreign competition, is it little military-based industry at all?

A *Rocky Mountain News* series beginning today — "Rockets in the Rockies" — asks those questions as it spotlights Colorado's amazing rocket resurgence: Over time, the state has become to rocket making what Michigan is to auto building.

The series (inside today's Sunday Spotlight section) is an ambitious look at hometown rocket maker Lockheed Martin Corp., whose suburban plant was born in the secrecy of the 1950s. To many, its operations haven't been well-understood. Until now.

"Rockets in the Rockies" is the story beyond the Martin space voyages and secret spy satellites, behind the government contract and layoff announcements, and beneath allegations of age discrimination.

It is, at its core, a dramatic business story — warts and all.

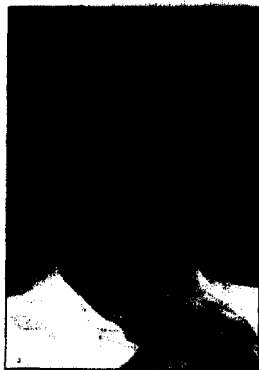
The story dates to June 16, 1994. That's when Martin Marietta Corp. unwrapped plans to move to Denver the rocket-making operations of General Dynamics, once a competitor, ultimately an acquisition.

Staff writers Rebecca Cantwell and Joseph B. Verrengia, photographer Dennis Schroeder and graphic artist Eric Baker tracked construction of the first Atlas II built in Colorado. They also captured in notebooks, film and paint a behind-the-scenes story that matters more than a good tale, which it definitely is.

Indeed, it's a healthy starting point for deciding Colorado's role in the Commercial Space Age. Who wins? Who loses?

And can it be maintained?

Don Knox's e-mail is donknox@comcast.net.



"Pictures have been made . . . the same way for 80 years. There's a pretty well-established system of checks and balances."

— Tom Bliss, executive VP

Big names backing up Beacon

BEACON from 1B

creator of content that can draw dollars not only at the box office but also through such other venues as On Command.

The cable system now has access to potentially 1 million hotel rooms and might tap Beacon to provide specialized programming for it, perhaps oriented to business travelers, that eventually might be peddled to other cable systems.

Beacon's principals all made names for themselves in Hollywood before creating the studio in 1990.

Chairman Arman Bernstein was screenwriter of *One From the Heart*, directed by Francis Ford Coppola, and the 1970s disco epic *Thank God It's Friday*. He also wrote and directed *Cross My Heart*, produced by Lawrence Kasdan of *The Big Chill* and *Body Heat* fame.

President Marc Abraham is an award-winning author, produced a documentary on Cuba's athletics system and wrote screenplays for, among others, *21 Jump Street* and *Moonlighting*.

Executive vice president Tom Bliss' production and direction work included television and films and earned him Cable ACE and Peabody Awards.

For Beacon, the backing of strong, high-profile corporate ownership, combined with its own reputation in Hollywood, increases its leverage to pull in top stars, writers and directors. That means adding bigger budget, potentially more lucrative pictures such as *Air Force One* to its crop of medium budget features such as *The Commitments* and *The Road to Wellville*.

It also means getting the hottest talent: Besides Ford, coming pictures include *A Thousand Acres*, featuring the first pairing of Jessica Lange and Michelle Pfeiffer, and *Playing God*, which began production this month with *X-Files* actor David Duchovny.

"Like any other town, or like life, there's a certain measure to your size," Bernstein said. "The fact we own teams, the fact we own a cable system, the fact we're making movies with Harrison Ford, Michelle Pfeiffer, Jessica Lange, David Duchovny... What happens is there's a certain success that's sort of passed from division to division."

"The source of our success recently is attributed to how gung ho Ascent is about the movie business."

Look behind the box office

A recent interview with Bernstein, Abraham and Bliss at their Hollywood offices provided a good look at Beacon's culture and strategy.

The company operates out of a modest suite of offices on an old Warner Bros. movie lot. There's no central air conditioning, so executives and staffers alike have window units or fans whirring.

The three sit in Bernstein's office, one-time headquarters of Hollywood mogul Sam Goldwyn — lined on one wall by bookshelves stuffed with scripts for past, potential and never-to-be projects with such



names as *Mr. Peanut*, *Peroxide Passion*, *Everything But The Bride* and *Feeling Minnesota*.

It took a leap of faith to go from being independent filmmakers to being part of the Comsat conglomerate. Hollywood is leery of "civilians," outsiders who "don't really get it" about an industry built as much on relationships and personalities as on money and business acumen.

Ascent chief executive Charlie Lyons, then head of Comsat's entertainment segment, quickly impressed the Beacon principals as someone who understood the business and "knew when to lead and when to stay out of the way," Bernstein said.

"Before we made that jump we had a long, long, long engagement period," said Abraham. "We really got to know those guys. We had a clear mandate to do what we were doing and be smart about doing it."

Equally attractive was the size and reach of Beacon's future parent.

"People in Hollywood are very keen observers of the rest of the world," said Abraham. "One of the things you find is they're very keenly aware of where the money is."

"If the perception of the organization is that this company is a solid backer of the film company, that it is not micromanaging but rather is an equal partner in an entertainment area that a lot of people are interested in, then I think it helps us."

Beacon's principals admit that being part of a public company forces a more conservative bent than an independent, private filmmaker might have. But a big benefit is the financial flexibility a big parent provides in paying for movie projects.

Beacon, like other studios, gets a lot of money from distribution deals with Sony, Disney or others. Much of the cash doesn't necessarily



begin coming in until a movie is delivered and even then may be paid over months or years.

To get more guaranteed money up front a studio typically has to sacrifice on its cut from the "back end," based on how a movie does at the box office. But because Beacon can tap Ascent's resources for more of its upfront cash needs, it has the flexibility to negotiate for a bigger piece of the back end. That can lead to bigger long-term profits.

"It's absolutely part and parcel of Ascent's ownership that we have the cash available to do that," Bliss said.



Beacon Communications Corp.'s medium-budget movies include *Sugar Hill* starring Wesley Snipes, left, *The Road to Wellville* with Anthony Hopkins, above, and *The Commitments*. Now the studio, owned by Ascent Entertainment of Denver, is planning bigger-budget, potentially more lucrative pictures such as *Air Force One* with Harrison Ford.

much the same way for 80 years. There's a pretty well-established system of checks and balances," said Bliss.

"It's rather like a military operation. Everyone has their function. There's not much redundancy; a not much waste. It's pretty easy seeing if people are proceeding at the speed they're suppose to be

Will it play, pay in Peoria

But even with its cost control and corporate owner, recent evidence indicate that rising costs and competition have made a tough environment even tougher for smaller filmmakers. For every success like Morgan Creek or Miramax there's Castle Rock, which parent Turner Broadcasting System is trying to sell following a \$60 million write at the troubled studio.

Art Rockwell, who follows the entertainment industry for Yaeg Capital Markets in Los Angeles, said a big supply of pictures from studios had heightened competition for play dates. Also, costs of production, movie prints and advertising have soared, he said.

More important, a lot of product doesn't play in Peoria.

Cinergi Pictures Entertainment is one example of the risks faced by independent studios. The public held company's stock has dropped from \$8 to about \$1.50 a share in past year, during which three of four big-budget releases last year bombed at the box office: *The Set*, *Let Nixon* and, of course, *Judge Dredd*.

"The general economics of the business are not good for the independents," Rockwell said. "If you have a streak of bad luck or bad taste you're in trouble."

Beacon is confident that won't be a problem. It plans five to six movies a year and has about 20 pictures in active development, including several romantic comedies, ethnic-oriented films aimed at the African American market and action pictures.

"We're very specific about our business plan," said Abraham. "Make good movies at a certain price. The more successful we are, the more attention we get, the more potential to attract bigger talent to make bigger productions."

"When you step into the Michelle Pfeiffer, Jessica Lange world, when you step into the Harrison Ford world on an action picture, your file has to go up."

That's a big consideration when even a medium budget picture like the coming *A Thousand Acres* costs about \$25 million. By comparison *Air Force One* is budgeted at about \$60 million to \$70 million and Warner Bros.' current special effects thriller *Twister* cost about \$90 million.

While negative publicity over such high-budget films as last year's \$175 million *Waterworld* tends to grab attention, Beacon doesn't seem to have as much trouble sticking to its on-budget, on-time philosophy.

"Pictures have been made pretty